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Kalamazoo, MI 49009
Radio Communications Equipment Sales and Service**

JAN 29 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Comments on NPRM PR Docket 92-235

Under Radio Services, page 3, part 18. Frequency coordination: "We propose that frequency coordinators continue to play a major role in managing the PLMR spectrum...APCO, NABER and SIRSA....."

The Federal Communications Commission and their General Council and Robert L. Pettit have repeatedly refused to deny they are in violation of Federal Civil Rights Laws* by forcing citizens to pay private sector entities for the right to participate in a Federally protected

Am Jur:

4 Am Jur 2d, Amusements and Exhibitions § 6.

INTERPRETIVE NOTES AND DECISIONS

Injunctive relief may not be sought under 18 USC § 244, as § 244 provides no basis for civil jurisdiction. *Quarles v Texas* (1970, DC Tex) 312 F Supp 835.

§ 245. Federally protected activities

(a)(1) Nothing in this section shall be construed as indicating an intent on the part of Congress to prevent any State, any possession or Commonwealth of the United States, or the District of Columbia, from exercising jurisdiction over any offense over which it would have jurisdiction in the absence of this section, nor shall anything in this section be construed as depriving State and local law enforcement authorities of responsibility for prosecuting acts that may be violations of this section and that are violations of State and local law. No prosecution of any offense described in this section shall be undertaken by the United States except upon the certification in writing of the Attorney General or the Deputy Attorney General that in his judgment a prosecution by the United States is in the public interest and necessary to secure substantial justice, which function of certification may not be delegated.

(2) Nothing in this subsection shall be construed to limit the authority of Federal officers, or a Federal grand jury, to investigate possible violations of this section.

→ (b) Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with—

(1) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from—

(A) voting or qualifying to vote, qualifying or campaigning as a candidate for elective office, or qualifying or acting as a poll watcher, or any legally authorized election official, in any primary, special, or general election;

→ (B) participating in or enjoying any benefit, service, privilege, program, facility, or activity provided or administered by the United States;

(C) applying for or enjoying employment, or any perquisite thereof, by any agency of the United States;

(D) serving, or attending upon any court in connection with possible service, as a grand or petit juror in any court of the United States;

→ (E) participating in or enjoying the benefits of any program or activity receiving Federal financial assistance; or

(2) any person because of his race, color, religion or national origin and because he is or has been—

(A) enrolling in or attending any public school or public college;

(B) participating in or enjoying any benefit, service, privilege, program, facility or activity provided or administered by any State or subdivision thereof;

(C) applying for or enjoying employment, or any perquisite thereof, by any private employer or any agency of any State or subdivision thereof, or joining or using the services or advantages of any labor organization, hiring hall, or employment agency;

(D) serving, or attending upon any court of any State in connection with possible service, as a grand or petit juror;

(E) traveling in or using any facility of interstate commerce, or using any vehicle, terminal, or facility of any common carrier by motor, rail, water, or air;

(F) enjoying the goods, services, facilities, privileges, advantages, or accommodations of any inn, hotel, motel, or other establishment which provides lodging to transient guests, or of any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility which serves the public and which is principally engaged in selling food or beverages for consumption on the premises, or of any gasoline station, or of any motion picture house, theater, concert hall, sports arena, stadium, or any other place of exhibition or entertainment which serves the public, or of any other establishment which serves the public and (i) which is located within the premises of any of the aforesaid establishments or within the premises of which is physically located any of the aforesaid establishments, and (ii) which holds itself out as serving patrons of such establishments; or

(3) during or incident to a riot or civil disorder, any person engaged in a business in commerce or affecting commerce, including, but not limited to, any person engaged in a business which sells or offers for sale to interstate travelers a substantial portion of the articles, commodities, or services which it sells or where a substantial portion of the articles or commodities which it sells or offers for sale have moved in commerce; or

→ (4) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from—

(A) participating, without discrimination on account of race, color, religion or national origin, in any of the benefits or activities described in subparagraphs (1)(A) through (1)(E) or subparagraphs (2)(A) through (2)(F); or

→ (B) affording another person or class of persons opportunity or protection to so participate; or

(5) any citizen because he is or has been, or in order to intimidate such citizen or any other citizen from lawfully aiding or encouraging other

persons to participate, without discrimination on account of race, color, religion or national origin, in any of the benefits or activities described in subparagraphs (1)(A) through (1)(E) or subparagraphs (2)(A) through (2)(F), or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate—

→ shall be fined not more than \$1,000, or imprisoned not more than one year, or both; and if bodily injury results shall be fined not more than \$10,000, or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life. As used in this section, the term “participating lawfully in speech or peaceful assembly” shall not mean the aiding, abetting, or inciting of other persons to riot or to commit any act of physical violence upon any individual or against any real or personal property in furtherance of a riot. Nothing in subparagraph (2)(F) or (4)(A) of this subsection shall apply to the proprietor of any establishment which provides lodging to transient guests, or to any employee acting on behalf of such proprietor, with respect to the enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of such establishment if such establishment is located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor as his residence.

(c) Nothing in this section shall be construed so as to deter any law enforcement officer from lawfully carrying out the duties of his office; and no law enforcement officer shall be considered to be in violation of this section for lawfully carrying out the duties of his office or lawfully enforcing ordinances and laws of the United States, the District of Columbia, any of the several States, or any political subdivision of a State. For purposes of the preceding sentence, the term “law enforcement officer” means any officer of the United States, the District of Columbia, a State, or political subdivision of a State, who is empowered by law to conduct investigations of, or make arrests because of, offenses against the United States, the District of Columbia, a State, or a political subdivision of a State.

(Added Apr. 11, 1968, P. L. 90-284, Title I, § 101(a), 82 Stat. 73.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Other provisions:

Fair housing. Section 101(b) of Act Apr. 11, 1968, P.L. 90-284, provided: “Nothing contained in this section shall apply to or affect activities under title VIII of this Act [42 USCS §§ 3533, 3535, 3601 et seq.]”

Riots or civil disturbances, suppression and restoration of law and order; Acts or omissions of enforcement officers and members of military service not subject to this section. Section 101(c) of Act Apr. 11, 1968, P.L. 90-284, provided:

CHAPTER 13. CIVIL RIGHTS

Section

- 241. Conspiracy against rights of citizens
- 242. Deprivation of rights under color of law
- 243. Exclusion of jurors on account of race or color
- 244. Discrimination against person wearing uniform of armed forces
- 245. Federally protected activities
- 246. Deprivation of relief benefits

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1968. Act Apr. 11, 1968, P. L. 90-284, Title I, § 102, 82 Stat. 75, amended the analysis of this chapter by adding item 245.

1976. Act Oct. 2, 1976, P. L. 94-453, § 4(b), 90 Stat. 1517, amended the analysis of this chapter by adding item 246.

§ 241. Conspiracy against rights of citizens

If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be fined not more than \$10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life.

(June 25, 1948, ch 645, § 1, 62 Stat. 696; Apr. 11, 1968, P.L. 90-284, Title I, § 103(a), 82 Stat. 75.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

This section is based on Act Mar. 4, 1909, ch 321, § 19, 35 Stat. 1092 (former 18 U.S.C. § 51).

Clause making conspirator ineligible to hold office was omitted as incongruous because it attaches ineligibility to hold office to a person who may be a private citizen and who was convicted of conspiracy to violate a specific statute. There seems to be no reason for imposing such a penalty in the case of one individual crime, in view of the fact that other crimes do not carry such a severe consequence. The experience of the Department of Justice is that this unusual penalty has been an obstacle to successful prosecutions for violations of the act.

else connected with powers or duties of National Government is attribute of national citizenship and, as such, under protection of and guaranteed by United States. United States v Cruikshank (1876) 92 US 542, 23 L Ed 588.

to state procedural rules, but rather to those rights which have been made specific by the express terms of the Constitution or laws of the United States or by decisions of the courts interpreting them. United States v O'Dell (1972,

of former presidential assistant who supervised break-in of psychiatrist's office, alleged mistaken belief that break-in was lawful under national security exception to Fourth Amendment warrant requirement did not constitute valid defense where defendant did not contend that specific

interference is by governmental or private action. United States v Guest (1966) 383 US 745, 16 L Ed 2d 239, 86 S Ct 1170.

Federal civil rights statute (18 USCS § 241), which makes conspiracy to interfere with citizen's free exercise or enjoyment of any right or

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a

§ 1985. Conspiracy to interfere with civil rights*Preventing officer from performing duties*

(1) If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed,

whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

R.S. § 1980.

Historical Note

Codification. R.S. § 1980 is from Acts Section was formerly classified to sec- July 31, 1861, c. 33, 12 Stat. 284; Apr. 20, tion 47 of Title 8, Aliens and Nationality. 1871, c. 22, § 2, 17 Stat. 13.

Cross References

Conspiracy against rights of citizens, see section 241 of Title 18, Crimes and Criminal Procedure.
Conspiracy to commit offense or to defraud United States, see section 371 of Title 18.
Conspiracy to impede or injure officer, see section 372 of Title 18.
Deprivation of rights under color of law, see section 242 of Title 18.
Equal protection, see U.S.C.A.Const. Amend. 14, § 1.
Jurisdiction of district courts of civil rights actions, see section 1343 of Title 28, Judiciary and Judicial Procedure.
Obstruction of justice, see section 1501 et seq. of Title 18, Crimes and Criminal Procedure.
Privileges and immunities, see U.S.C.A.Const. Art. 4, § 2, cl. 1, and Amend. 14, § 1.
Universal male suffrage, see U.S.C.A.Const. Amend. 15.
Woman suffrage, see U.S.C.A.Const. Amend. 19.

Library References

Conspiracy § 7.5 to 7.7, 29.5, 29.6. C.J.S. Conspiracy §§ 10.2, 57(1, 2).

West's Federal Forms

Allegations of jurisdiction, see §§ 1057, 1060.
Complaint, see § 1850 Comment.

Notes of Decisions

- I. GENERALLY 1-30
- II. ELEMENTS OF ACTION 31-40
- III. RIGHTS OR PRIVILEGES PROTECTED 61-100
- IV. MANNER OR METHOD OF INTERFERENCE 101-100
- V. PERSONS LIABLE OR IMMUNE FROM LIABILITY 161-220
- VI. PRACTICE AND PROCEDURE—GENERALLY 221-290
- VII. COMPLAINT 291-300

Generally 1-30
Abstention doctrine 229
Abuse of process 101
Access to courts 71
Action under color of state law 39
Adequacy of state remedies 222
Administrative remedies, exhaustion of 234
Admissibility of evidence 230
Admission of evidence 102
Amendment of complaint 299
Ancillary jurisdiction 230
Arbitrators 107

Assault and battery 103
Attorney General 100
Attorneys 100
Bail 72
Battery 103
Business, injuries to 131
Care and treatment of prisoners 130
Causation 32
Citation of statute in complaint 300
Class actions 241
Class-based discrimination 23
Classes of persons protected 3
Collateral estoppel 244

section relating to a conspiracy to deprive others of their civil rights would be struck, since even a cursory review of the amended complaint showed that the word "conspiracy" was not even mentioned, let alone alleged with the requisite clarity. *Schwab v. First Appalachian Ins. Co.*, D.C.Fla.1973, 58 F.R.D. 615.

Complaint alleging that defendant had interfered with attorney-client relation-

ship existing between plaintiffs, that defendant had made very critical comments about attorney, that he had defamed plaintiffs' character and that the plaintiffs had been deprived of their civil rights by defendant's action in furtherance of a conspiracy with another person was properly stricken and the cause dismissed on grounds of scurrility. *Skolnick v. Nudelman*, 1968, 237 N.E.2d 804, 95 Ill.App.2d 293.

§ 1986. Action for neglect to prevent

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding \$5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

R.S. § 1981.

Historical Note

Codification. R.S. § 1981 is from Act Section was formerly classified to sec- Apr. 20, 1871, c. 22, § 6, 17 Stat. 15. tion 48 of Title 8, Aliens and Nationality.

Federal Rules of Civil Procedure

Joinder of persons needed for just adjudication, see rule 19, Title 28, Judiciary and Judicial Procedure.
Misjoinder and non-joinder of parties, see rule 21.
One form of action, see rule 2.
Permissive joinder of parties, see rule 20.
Substitution of parties, see rule 25.

Library References

Civil Rights § 15. 18. C.J.S. Civil Rights §§ 24, 197 to 200.
Torts § 6. C.J.S. Torts §§ 13 et seq., 40 et seq.

West's Federal Forms

Allegations of jurisdiction, see §§ 1057, 1060.
Answer,
Failure to join party, see §§ 2040 to 2042.
Statute of limitations, see §§ 2109 to 2113.

fully consider the legitimate needs of public safety agencies in managing the private land mobile spectrum.

The Conferees believe that implicit in the guidelines enumerated in subsection 331(a) is the principle that the Commission may not employ auctions in managing the spectrum made available for use by the private land mobile services. The Conferees are concerned that use of an auction—that is, selling frequency space to the highest bidder—or a similar method which turns upon a user's monetary ability to pay for a frequency allocation will work to the detriment of an efficient and competitive private land mobile spectrum. Thus, by providing the guidelines in this subsection, the Conferees intend to specifically prohibit the Commission from employing auctions or similar economic methods in managing the private land mobile spectrum. However, this prohibition should not be construed to limit the ability of the Commission to use lottery procedures for purposes of granting private land mobile licenses, or to impose reasonable fees upon a private land mobile licensee after the grant of the license.

Subsection 331(b).—The Conferees recognize the value of the assistance provided to the Commission by non-Federal Government advisory coordinating committees in the frequency assignment process for the private land mobile and fixed services. Subsection 331(b) specifically authorizes the Commission to utilize the services of such committees.

The number of licensees and users in the private land mobile and fixed services is already large. There are now approximately 850,000 stations in these services and there are almost 25,000 applications received each month for private land mobile and fixed station licenses. The number of licenses is expected to increase even more dramatically in the future. *See Future Private Land Mobile Requirements*. Notice of Inquiry, FCC 82-2, PR Docket No. 82-10, released January 26, 1982.

From the data on record with the FCC, the Conferees are convinced that the frequency coordinating committees not only provide for more efficient use of the congested land mobile spectrum, but also enable all users, large and small, to obtain the coordination necessary to place their stations on the air. Without such frequency coordinating committee activity, some of these applicants would not be able to afford the engineering required in the applications process. Thus, by essentially equalizing the frequency selection process for all applicants, the applicants are placed on a com-

appropriate field study coordination techniques. *See* 47 C.F.R. 90.175 (1981). In adopting these provisions authorizing the Commission's use of advisory coordinating committees for coordinating the assignment of frequencies to stations in private land mobile service and in the fixed services, the Conferees do not intend to mandate the elimination of frequency coordination by way of field study engineering reports. The FCC would thus have the discretion to conduct frequency coordination through use of a frequency coordinating committee or by accepting the submission of a field study report, as the Commission determines best serves the public interest.

The section also makes it clear that advisory committee personnel retain their private sector status. They are not to be considered employees of the United States Government and they are not covered by the provisions of either 5 U.S.C. 2101 et. seq. or 31 U.S.C. 665(b) (1976). Finally, this section makes it clear that any committee which assists the Commission in this regard is not subject to the provisions of the Federal Advisory Committee Act.

Subsections 331(c) and 3(gg).—The purpose of adding Subsections 3(gg) and 331(c) to the Communications Act of 1934, as amended, is threefold:

- (1) to provide a definition of private land mobile service;
- (2) to delineate the distinction between private and common carrier land mobile services; and,
- (3) to specify the appropriate authorities empowered to regulate these same services.

The Communications Act of 1934, as amended, does not include a definition of the private land mobile services. New subsection 3(gg) adds this definition and thereby provide explicit Congressional support and guidance for existing and future FCC regulation of these services. The definition adopted herein encompasses the myriad of radio systems utilized by these governmental, commercial, industrial and transportation licensees which range from small relatively uncomplicated two-way dispatch systems, to complex ones involving multiple transmitters to cover wide areas. The private land mobile services currently consist of the following radio services: local government, police, fire, highway maintenance, forestry conservation, special emergency, power, petroleum, forest products, motion picture, relay press, special industrial, business, manufacturers, telephone maintenance, motor carrier, railroad, taxicab.

Frequency coordinating committees

S. 929 specifically authorizes the FCC to rely upon the private sector, through non-Federal Government frequency coordinating committees, in the initial frequency coordination process of assigning channels above 30 MHz in the Private Land Mobile Services. S. 929 reflects existing FCC practices which provide that in addition to using the services of coordinating committees, applicants may also effect coordination through the submission of their own reports. S. 929, therefore, does not alter the FCC's overriding responsibility to manage and assign the use of the land mobile spectrum.

Some commentators also have suggested that the FCC should adopt rules and regulations outlining the responsibilities of the coordinating committees so as to provide them with clear guidance, monitor their performance, and encourage the development of spectrum efficient techniques. In this regard, it is noted that one of the major private land mobile organizations, the Land Mobile Communications Council (LMCC), has made a formal proposal to the FCC concerning this matter and has suggested that there be rule making to establish criteria for these coordinating groups to apply in their coordinating efforts in the 800 MHz bands available to these services. The LMCC proposal also calls for continued monitoring of the frequency coordinating groups' performance. The Committee further notes that the FCC itself now has an outstanding proceeding for developing criteria for coordinating committees and procedures for FCC monitoring of their performance. (See Notice of Inquiry, Docket No. 21229, 42 Fed. Reg. 26029 (1977)).

From data on record with the FCC, the Committee is convinced that the frequency coordinating committees not only provide for more efficient use of the congested land mobile spectrum, but also enable all users, large and small, to obtain the coordination necessary to place their stations on the air. Without such frequency coordinating committee activity, some of these applicants would not be able to afford the engineering required in the applications process. Thus, by essentially equalizing the frequency selection process for all applicants on a nationwide basis, the applicants are placed on a competitive parity, with no one applicant operating on a better or more commercially advantageous frequency than his or her competitor. The Committee notes that this pro-competitive aspect of frequency coordination is of particular importance to small business operators.

LEGISLATIVE HISTORY

S. 929 was introduced by Senator Goldwater (with Senators Packwood, Schmitt, Pressler, Stevens, Cannon, Hollings, and Inouye) on April 8, 1981. The Committee on Commerce, Science, and Transportation did not hold hearings, but extensive written comments were received from interested parties, which included suggested revisions, additions, and deletions. The Committee has considered all views presented in recommending the legislation reported herein.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of